

the bank without releasing the guarantor from his liability under the guarantee. A

My view of the matter is that the guarantee and the debenture must be read together and when this is done it is patently clear that what the guarantors did guarantee under the guarantee was money which was due and owing as of May 2, 1974 and money to be lent thereafter to the total extent of \$1,500,000. Consideration for the said guarantee in my view was plaintiff bank being induced to sign the debenture. B

Clause 1 of the said debenture states that

"In consideration of the Bank agreeing to grant or continuing to grant the banking facilities to the Company to such an extent and for so long as the Bank may think fit the Company hereby covenants and undertakes that it will on demand pay to the Bank all such sums of money which now or shall from time to time and at any time hereafter be due or owing to the Bank by the Company solely or jointly with any other person or persons and whether as principal or surety or which the company may be or become liable to pay to the Bank anywhere on any account or otherwise or in any manner whatsoever and all other liabilities whether certain or contingent including the balance for the time being owing..." C

Under the guarantee the first defendant and the three other defendants thereby jointly and severally acknowledged that the debenture was subscribed for on condition and in part consideration that they would jointly and severally give the guarantee set out therein. D

For this reason I allowed the plaintiff's claim with costs. E

Claim allowed.

Solicitors: Rodyk & Davidson; Foo & Quek.

**THE "ASIA STAR";
LAM HUAT LIGHTERAGE CO. v.
OWNERS OF FREIGHT AND/OR CARGO ON
M.V. "ASIA STAR" AND/OR PROCEEDS OF
SALE THEREOF**

[O.C.J. (Chua J.) September 11, 1979]

[Singapore — Admiralty in Rem No. 64 of 1975]

Shipping Law — Lighterage — Claim against cargo-owners for lighterage services etc. — "Common carriers" — Meaning of — Hague Rules, Art. III r.8.

The facts in this case revealed that a vessel, "Asia Star" owned by a company in Taiwan was chartered to P. Corporation of Taiwan. The vessel sailed to Bangkok where it was loaded with a cargo of parboiled rice and textiles. Freight was prepaid and the cargo was to be carried from Bangkok to Jeddah or Hodeidah. The "Asia Star" arrived in Singapore on December 2, 1974. Upon arrival in Singapore, the master of the vessel lodged two marine protests to say that en route to Singapore from Bangkok the vessel had encountered heavy seas and that there had been damage to the vessel and the cargo. It was decided to tranship the cargo to m.v. "Dong Hing" which was to carry it to Jeddah or Hodeidah. On December 23, 1974 C.S. were appointed agents and they were requested by letter dated December 23, 1974 to discharge the cargoes on the "Asia Star" on to lighters to be stored pending transhipment to Jeddah and Hodeidah by the "Dong Hing", which was expected to arrive in Singapore on December 25, 1974. C.S. then engaged K.C. to do the job. K.C. in turn engaged the plaintiffs to provide the lighters. The "Dong Hing" never arrived in Singapore and the "Asia Star" slipped out of the Port of Singapore without port clearance. I

In another suit, C.S. obtained an Order of Court for the sale of the defendants' cargo (parboiled rice). The plaintiffs intervened.

The present action was brought to claim against the defendants for payment of lighterage, towage, stevedoring, slinging stacking and other services performed by the plaintiffs for the defendants at the defendants' request and/or at the request made for and/or on behalf of the defendants as well as for demurrage arising out of the detention of the plaintiffs' lighters.

The plaintiffs claimed that they were common carriers. They also relied on the Bills of Lading which they alleged entitled the carrier to "tranship" to the port of discharge the cargo shipped on board the "Asia Star" by the shippers. The plaintiffs contended that clauses 13 and 14 of the Bills of Lading were applicable. The defendants on the other hand submitted that clause 13 which provided that the forwarding is "at the risk of the shipper, consignee and/or owner of the goods" and clause 14 which provided that in the case of transshipment the vessel or carrier is absolved "from all claims or liabilities of every description" were contrary to the Hague Rules and were void as they relieved the carrier or the ship from liability for loss or damage to the goods.

One of the defendants, S., counterclaimed against the plaintiffs for damages. S. claimed that the plaintiffs wrongfully and without legal justification claimed a lien over his rice for their charges and refused to allow him to take delivery until their claim was paid. During the period of wrongful detention, there was a fall in the market price of rice and he suffered a loss. He also alleged that the condition of his rice deteriorated as a consequence of the long period in which it was kept in the plaintiffs' lighters; that the said deterioration would not have occurred if his rice had been released for shipment or discharged into a godown away from the damp.

Held, allowing the plaintiffs' claim: (1) to make a man a common carrier he must carry the goods as a public employment; he must carry for all indifferently; he must hold himself out as ready to carry for reward so long as he has room; he must hold himself out as ready to carry for hire, at a reasonable rate, as a business and not as a casual occupation for a particular occasion. A man may be a common carrier without so styling himself. The question is not determined by a man's description of his own business, although it may be inferred from its character that he is a common carrier; the plaintiffs in this case were common carriers and had proved their claim; F

(2) Article III of the Hague Rules is an article providing that the carrier must exercise due diligence in certain respects. Clauses 13 and 14 of the Bills of Lading did not infringe the said article as they were merely terms of the contract under which the shippers agreed that the master should be their agent in doing various things and such terms could not be a lessening of the carrier's liability; G

(3) there was no merit in the counterclaim. The defendant S. had acted unreasonably by delaying to take delivery of the rice. The plaintiffs, instead, had taken all reasonable means to preserve the rice in the lighters.

ADMIRALTY IN REM.

H.E. Cashin for the plaintiffs.

C.H. Smith (S.Q. Ong with him) for owners of cargo J2, J3, J4 and J5 — Sharbatly.

Miss Lai Siu Chiu for cargo owner J1.

W.E. Jansen for cargo owner J6 and J7.

Lee Kim Siang for cargo owner H1-H6.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case claim against "The Owners of the Freight and/or Cargo lately laden on the m.v. "Asia Star" and/or the proceeds of sale thereof" and their claim is "for lighterage, towage, stevedoring, slinging stacking and other services per-

formed by the plaintiffs for the defendants at the defendants' request and/or at the request made for and/or on behalf of the defendants as well as for demurrage arising out of the detention of the plaintiffs' lighters and/or lighters under the use or management of the plaintiffs".

Appearance was entered for the owners of cargo shipped under (1) Bill of Lading J1; (2) Bills of Lading Nos. J2, J3, J4 and J5; (3) Bills of Lading Nos. J6 and J7 and (4) Bills of Lading H1, H2, H3, H4, H5 and H6.

The short facts are these. The m.v. "Asia Star" (the vessel) was owned by Kai Fah Marine Co. S.A. of Taiwan. The vessel was in November 1974, under charter to Pacific Ever-Green Marine Corporation (Pacific Ever-Green) also of Taiwan. The vessel went to Bangkok and there the vessel was loaded with a cargo of parboiled rice and textiles, the subject-matter of this suit. On or about November 28, 1974, the vessel sailed from Bangkok to Jeddah and Hodeidah, ports in the Red Sea. The Bills of Lading in respect of the cargo were issued by United Thai Navigation Co. Ltd. of Bangkok as agents. Freight was prepaid and the cargo was to be carried from Bangkok to Jeddah or Hodeidah.

The vessel arrived in Singapore on December 2, 1974. Upon arrival in Singapore, the master of the vessel lodged two marine protests to say that en route to Singapore from Bangkok the vessel had encountered heavy seas and that there had been damage to the vessel and the cargo. It was decided to tranship the cargo and on December 11, 1974, a Fixture Note was entered into by Pacific Ever-Green to charter the m.v. "Dong Hing" to carry the cargo which was on the "Asia Star" to Jeddah or Hodeidah and the date of loading was to be from December 25, 1974, to January 5, 1975. The vessel's agents then were Gibson Agency Shipping Co. (Pte) Ltd. The vessel's agents refused to act.

On December 23, 1974, Constant Shipping & Travel Enterprises (Pte) Ltd. (Constant Shipping) were appointed agents of the vessel and they were requested by letter dated December 23, 1974, to discharge the rice and general cargoes on board the "Asia Star" on to lighters to be stored pending transhipment to Jeddah and Hodeidah by the "Dong Hing", which was expected to arrive in Singapore on December 25, 1974. Constant Shipping then engaged Kim Chye Trading & Transport Co. (Kim Chye Trading) to do the job. Kim Chye Trading at that time did not own any lighters and they engaged Lam Huat Lighterage Co. (the plaintiffs) to provide the lighters.

On December 24, 1974, the plaintiffs sent the lighters to the "Asia Star". The cargo was unloaded into sixteen lighters. Kim Chye Trading provided the tally clerks and the labourers to handle the cargo. Unloading was completed on December 27 and the lighters were taken to Telok Ayer Basin.

The plaintiffs then presented their bill of \$25,895.55 dated January 2, 1975, to Kim Chye Trading and Constant Shipping. The "Dong Hing" never arrived in Singapore and on the night of January 3/4, 1975,

A the "Asia Star" slipped out of the Port of Singapore without port clearance.

At the end of January 1975, the plaintiffs threatened to commence legal proceedings against Constant Shipping if their bill, which by then had risen to \$115,577.10, was not paid.

B On January 11, 1975, Constant Shipping commenced an action, Admiralty in Rem Suit No. 10 of 1975, against "The Owners of the Freight and Cargo lately laden on the m.v. "Asia Star" or the proceeds of sale thereof."

C Constant Shipping obtained an Order of Court dated January 17, 1975, for the sale of the cargo of parboiled rice then lying in the lighters of the plaintiffs in Telok Ayer Basin. Then the owners of the parboiled rice shipped under Bills of Lading H1 to H6 applied to set aside the Order of January 17, 1975. Following this the owners of cargo shipped under Bills of Lading J1 to J7 came into the picture. The plaintiffs then applied to intervene in the proceedings. By an Order dated February 7, 1975, it was ordered that the defendants furnish bail to Constant Shipping in the sum of \$230,000 as security for whatever claims Constant Shipping might have against the defendants as cargo owners and that the defendants as between themselves furnish the said bail by way of bail bonds in proportion to their respective tonnages of cargo and that upon the furnishing of the said bail bonds and upon the production of the bills of lading or other proof of title satisfactory to the Registrar Constant Shipping and the interveners (the present plaintiffs) deliver the cargo to the defendants; that the order of sale dated January 17, 1975, be stayed; that upon the interveners by their solicitors undertaking to issue a writ of summons against the defendants that the defendants furnish bail to the interveners in that suit in the sum of \$120,000 as security for whatever claim they might have against the defendants as cargo owners.

In pursuance of that order the plaintiffs commenced the present proceedings on February 21, 1975.

H The plaintiffs claim to be entitled to payment on the ground that (a) the offloading on to the lighters of the plaintiffs was lawfully done by the master and/or owners of the vessel, on behalf of the respective owners of the cargo, by virtue of the powers given by the respective Bills of Lading and/or as agents of necessity; and or (b) the offloading on to the lighters of the plaintiffs was lawfully done by the master and/or owners, on behalf of the respective owners of the cargo by reason of the fact that the respective Bills of Lading provided on their face for the respective cargo "to be transported by the vessel below" (that is the m.v. "Asia Star") "or transhipped to the port of discharge" and or (c) the cargo was offloaded on to the lighters by the master who on behalf of the respective owners of the cargo had ostensible or apparent authority to do so to be inferred from the fact that he was the master of the vessel on which the cargo lay and the plaintiffs had no notice of any facts which would have limited or negated such ostensible or apparent authority. The plaintiffs also claim to have a maritime lien. The plaintiffs say that

"it was an implied terms of the contract to be inferred between the plaintiffs of the one part and the captain and/or

owners on behalf of the respective owners of the said cargo of the other part, to be inferred from the said unloading on to the plaintiffs' lighters that the plaintiffs should be paid by the respective owners of the said cargo the charges customarily charged by lightermen in the Port of Singapore and have a lien therefor which is the custom in the Port of Singapore for lightermen into whose lighters goods are placed."

Further the plaintiffs claim damages against each of the defendants. The plaintiffs say that the defendants delayed in complying with the Order of February 7, 1975, made in Admiralty in Rem Suit No. 10 of 1975 in that they delayed in taking delivery of their respective cargo; that when the defendants had furnished certain bail bonds in compliance with the terms of the said Order the plaintiffs were ready and willing to give delivery of the said cargo but the defendants refused or delayed to take prompt delivery so that the plaintiffs were unable to make delivery until April, May and July 1975; and that the delay of the defendants in taking delivery had caused them loss or damage.

There are several areas of dispute. First, the plaintiffs claim that at all material times they have carried on business as common carriers by lighter in the Port of Singapore. The defendants deny that the plaintiffs were common carriers. The argument of the defendants is this. The plaintiffs were and still are members of the Singapore Lighter Owners' Association (the Association) and each member of the Association contract on the express condition, contained in the Association's printed notice of terms of contract, that the members are not common carriers.

The Association passed certain resolutions referred to and known as "The Singapore Lighterage clause". In the printed "NOTICE TO ALL USERS OF LIGHTERS OWNED OR OPERATED BY THE BELOW-MENTIONED MEMBERS OF THE SINGAPORE LIGHTER OWNERS' ASSOCIATION" the preamble reads:

"The members of the Association, denying being common carriers and being desirous of limiting their liability in respect of cargoes carried by their lighters (which term includes twakos, tugs, tongkangs and motor-sampan) in and outside the Port of Singapore, have resolved as follows (the said Resolution is hereafter referred to and known as 'The Singapore Lighterage clause'):-...."

The question therefore is: are the plaintiffs common carriers?

The law is clearly set out in Vol. 5 *Halsbury's Laws of England* (4th Ed.) paras. 302 and 303. To make a man a common carrier he must carry the goods as a public employment; he must carry for all indifferently; he must hold himself out as ready to carry for reward so long as he has room; he must hold himself out as ready to carry for hire, at a reasonable rate, as a business and not as a casual occupation for a particular occasion. The question whether a man is a common carrier or not is in every case a question of fact. A man may be a common carrier without so styling himself. The question is not determined by a man's description of his own business, although it may be inferred from its character that he is a common carrier.

In this case I find on the evidence that the plaintiffs are common carriers.

Second, the plaintiffs say that the Bills of Lading entitle the carrier to "tranship" to the port of discharge the cargo shipped on board the "Asia Star" by the shippers and they submit that clauses 13 and 14 of the Bills of Lading are applicable. Clause 13 relates to "Forwarding" and clause 14 to "Transshipment". The defendants, however, submit that these two clauses infringe Article III rule 8 of the Hague Rules and in consequence they are of no legal effect and are not binding on the defendants.

Clauses 13 and 14 of the Bills of Lading read:

"Clause 13

(Forwarding) The carrier shall have liberty to forward any or all the goods described herein to their destination by the above or any other vessel, by rail or any other conveyance, belonging either to it or any other company or individual, by any route direct or indirect, and at vessel's option, to tranship at any place or places to any other vessel, vessels or means of transportation, or to land or store, or to discharge the goods at any other port or place, or to put into bulk, craft or lighter, to reship in the same or other vessel proceeding by any route, or to forward by lighter, rail or any other conveyance, whether departing or arriving or scheduled to depart or arrive before or after the vessel named herein and always subject to the conditions and exceptions of the forwarding conveyance and at the risk of the shipper, consignee and/or owner of the goods, and the vessel and/or carrier shall not be liable for the risk of transshipment, landing, storing, discharging or reshipment, and also the carrier shall have liberty to retain the goods on board until the vessel's return or other voyage, to proceed to any other ports or places, with full liberty to return, call, deviate, delay or stay as elsewhere in this Bill of Lading provided, at any place or places even though outside the scope of the voyage or the route to or beyond the port of destination.

When the goods leave the vessel's tackle or deck, as herein provided, the delivery thereof and performance under this contract shall be considered complete and the vessel and/or carrier shall be considered free from any further responsibility in respect thereof.

Further, the vessel and/or carrier shall be entitled to render the services as hereinabove provided at the risk and expense of the shipper, consignee and/or owner of the goods, whenever in any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgement of the carrier or the master is likely to give rise to capture, seizure, detention, damage, delay or disadvantage to, or loss of, the vessel or any part of the goods or passengers, to make it unsafe, imprudent, inadvisable or unlawful for any reason to commence or proceed on or continue the voyage or in any case where the goods are consigned to a port where the vessel does not expect to discharge.

The above rights are not affected by abandonment of the vessel by her crew or to the underwriter.

Clause 14

(Transshipment) The liability of the vessel and/or carrier for any alleged loss or damage to any goods shall be confined to its own route, and the vessel and/or carrier shall not be liable jointly or to any extent for any loss or damage occurring upon the route of any other connecting carriers, even though the freight for the whole transport has been collected by this company.

A delivery at the port of transshipment from the vessel's tackle, or deck of the goods, enumerated in this Bill of Lading according to the terms hereof to the connecting carrier shall absolve the vessel and/or carrier from all claims or liabilities of every description.

The carrier, in making arrangements for any transshipping or forwarding vessel or means of transportation not operated by this carrier shall be considered solely the forwarding agent of the shipper, consignee and/or owner of the goods and without any other responsibility whatsoever.

The carriage by any transshipping or forwarding carrier and all transshipment or forwarding shall be subject to all the terms, conditions and exceptions whatsoever in the regular

form of bill of lading, freight note, contract or other shipping document used at the time by such carrier, whether issued for the goods or not, and even though such terms and conditions may be less favourable to the shipper, consignee and/or owner of the goods than the terms and conditions of this Bill of Lading and may contain more stringent requirements as to notice of claim or commencement of suit and may exempt the on carrier from liability for negligence.

The shipper expressly authorises the carrier to arrange with any such transshipping or forwarding carrier that the lowest valuation of the goods or limitation of liability contained in the bill of lading or shipping document of such carrier shall apply even though lower than the valuation or limitation herein, provided that the shipper shall not be compelled to pay a rate higher than that applicable to the valuation contained in such bill of lading.

Goods shall be forwarded as soon as practicable but the carrier does not guarantee that the forwarding conveyance shall have room at ports of transshipment.

Pending or during the transshipment the goods may be stored ashore or afloat at their risk and expense and the carrier shall not be liable for detention or delay.

It is agreed that should there be no tonnage available at the on-carrying rates shown in this Bill of Lading, the difference shall be paid by the consignee before delivery further, the shipper, consignee and/or owner of the goods, jointly and severally shall be liable for all additional costs of every nature including, but not limited to, storage cartage or handling charges.

For dutiable goods transhipped the carrier may give such undertaking as Customs require at port of transshipment with respect to dealing with goods at port where duty is payable and all charges and risks incurred shall be on account of the shipper, consignee and/or owner of the goods.

Consular fees on goods, if any, are to be borne by the shipper, consignee and/or owner of the goods.

Goods forwarded by rail are deliverable at any railway station within or nearest to the port of destination and must be taken away by the consignee immediately after arrival, otherwise the consignee or owner of the goods shall be liable for any expenses incurred. Rail freight, if any, shown herein is subject to change in accordance with tariffs of the connecting rail carrier in effect upon receipt by it of the goods.

In the event of any delay or detention of the vessel due to any of the aforementioned cause, demurrage shall be paid by the shipper, consignee and/or owner of the goods. The total demurrage shall be paid pro rata by the shippers, consignees and/or owners of the goods according to the freight charged."

Article III rule 8 of the Hague Rules reads:

"Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

The defendants submit that as clause 13 provides that the forwarding is "at the risk of the shipper, consignee and/or owner of the goods" and as clause 14 provides that in the case of transshipment the vessel and/or carrier is absolved "from all claims or liabilities of every description" these clauses are contrary to the Hague Rules and are void as they relieve the carrier or the ship from liability for loss or damage to or in connection with the goods.

Article III is an article providing that the carrier must exercise due diligence in certain respects. Clauses 13 and 14 are merely terms of the contract under which the shippers agreed that the master should be their agent in doing various things and such terms cannot be a lessening of the carrier's liability. I can-

A not see how clauses 13 and 14 infringe Article III rule 8 of the Hague Rules.

Third, the plaintiffs contend that it was the master and the charterer who instructed Constant Shipping to discharge the cargo. The defendants' contention is that as the ship was under charter it was under the control of the charterer and the master must obey the charterer's direction and that it was the charterer who instructed the master to discharge the cargo and that negatives the suggestion that the master acted on his own initiative.

There has been no suggestion that the two marine protests had been fraudulently made by the master. I find on the evidence that the cargo and the vessel received damage from rough weather and the vessel could not undertake the long sea voyage to the Red Sea and the master and the charterer's representative Ip Tsan Man instructed Constant Shipping to discharge the cargo on to the lighters in anticipation of transshipment to another vessel which the charterers would arrange. There was no question of the contract of carriage in respect of the cargo being abandoned by the charterers at or prior to the time when the cargo was off-loaded.

Fourth, the plaintiffs say that 15,592 bags, equivalent of about 1105.471 tons, of rice in respect of Bills of Lading Nos. J2-J5 were discharged from the vessel on to the lighters. The owner of the rice subject of Bills of Lading J2-J5 (hereinafter referred to as "SHARBATLY") says that 15,714 bags of rice of which he was at all times the sole owner were discharged from the vessel on to the lighters; that the plaintiffs subsequently delivered to him 15,601 bags of rice of which 773 bags do not bear his marking but bear the "BAICHIN" mark and that 644 of the bags delivered were damaged. Sharbatly says that it was quite wrong of the plaintiffs to charge him for keeping the 773 bags bearing the "BAICHIN" mark and that he accepted the 773 bags conditionally on the real owner having no objection. Sharbatly further says that it was the duty of the plaintiffs, having obtained possession of his goods, to keep them safely, and that if the plaintiffs became possessed of his goods in the capacity of common carriers then the plaintiffs were under an absolute duty amounting to the equivalent of being insurers of his goods to safely and securely preserve such goods.

I find on the evidence that the lighters were seaworthy and that the plaintiffs had taken all reasonable care of the cargo in the lighters. The defendants on the other hand had been unreasonable in delaying to take delivery of the cargo from the lighters. Sharbatly has not adduced evidence to support his contention that 15,714 bags of rice belonging to him were discharged from the vessel on to the lighters.

I In my view the plaintiffs have proved their claim.

I now come to deal with the counterclaim of the defendant Sharbatly.

The defendant Sharbatly says that the plaintiffs wrongfully and without any legal justification claimed a lien over his rice for their charges and refused to allow him to take delivery until their claim was paid

and that during the period when this wrongful detention of the rice continued there was a fall in the market price of rice and in consequence he has suffered a loss.

He further says that although he deposited \$200,000 into court and obtained an Order of Court that the whole of his rice should be released to him by the plaintiffs the plaintiffs wrongfully obstructed the removal of the rice by the following acts:—

- (a) The plaintiffs by their servants or agents physically preventing lightermen of his contractor from taking delivery of the rice.
- (b) The plaintiffs invoked the assistance of the Association, which led to a boycott and resulted in the refusal of any member of the Association to take delivery of the rice; as a consequence of such boycott he was obliged to arrange for the removal of his rice by a lighterage contractor who was not a member of the Association; as the employees of the plaintiffs threatened physical opposition to the rice being removed from the plaintiffs' lighters the said lighterage contractor required higher remuneration in view of the risks involved.
- (c) The plaintiffs failed to restrain their employees from physically obstructing his lighterage contractor and as a consequence of the threatening attitude of the plaintiffs' employees he was obliged to employ CISCO guards.

Sharbatly says that, in addition to the damage of his rice caused by the leakage of the plaintiffs' lighters, the condition of his rice deteriorated as a consequence of the long period in which it was kept in the plaintiffs' lighters; that the said deterioration would not have occurred if his rice had been released for shipment or discharged into a godown of the Port of Singapore Authority where it would have been properly stored away from damp.

The defendant Sharbatly counterclaims:—

- | | |
|--|------------------|
| (a) For damage of his rice caused by the breach of duty and negligence of the plaintiffs ... | \$ 41,081 |
| (b) The value of 880 bags of rice belonging to him which the plaintiffs failed to deliver ... | \$ 70,087 |
| (c) Expense of engaging CISCO guards ... | \$ 700 |
| (d) Damage suffered by him as result of the fall in price of rice being caused by wrongful detention of his rice ... | \$380,380 |
| (e) Loss attributable to general deterioration of his rice whilst wrongfully detained by the plaintiffs | \$117,374 |
| (f) Excess remuneration over and above normal lighterage charges as a consequence of the employees of the plaintiffs threatening physical opposition to the rice being removed from the plaintiffs' lighters ... | \$ 30,600 |
| | <u>\$639,622</u> |

It is not correct that the plaintiffs refused to release the defendant's rice or any part of it on the alleged ground that the plaintiffs had a lien on the said rice for their charges. The truth of the matter is that this defendant's rice at the date of the Order of February 7, 1975, had been under arrest by Constant Shipping from January 13, 1975, and by the said Order delivery of the rice could not take place until, *inter alia*, bail had been furnished to Constant Shipping and proof of title to this defendant's rice had been produced to the Registrar. Such requirements were not complied with by this defendant until May 9, 1975, and the Registrar made a direction for the cargo shipped under Bills of Lading J2 to J5 to be released

to one S.A. b. Hafiz or order. On or about May 15, 1975, the plaintiffs sent their lighters alongside the m.v. "Vallmoon" at the request of S.A. b. Hafiz and Boustead Trading (S) Pte. Ltd. on behalf of this defendant in order that the rice of this defendant might be loaded on the said vessel for shipment to Jeddah by this defendant. The rice under Bills of Lading J6 and J7 was also in the lighters. Only the rice under Bills of Lading J6 and J7 were loaded on the "Vallmoon" but the rice under Bills of Lading J2 to J5 was not loaded as the booking of space on the vessel for that cargo had been cancelled by this defendant or his agents and the plaintiffs had to tow back the lighter containing this cargo to Telok Ayer Basin.

I find on the evidence that the lighters were seaworthy when the rice was first put on board the lighters. One cannot expect the lighters to remain impervious to the elements after seven months whilst they lie idle. This defendant on the other hand acted unreasonably by delaying to take delivery of the rice. He did not take delivery until mid-July and only as to part of it and did not take the remainder till the end of July. I find that the plaintiffs have taken all reasonable means to preserve the rice in the lighters.

The allegation that the plaintiffs wrongfully obstructed the removal of the rice of this defendant has not been substantiated by this defendant. I find that due to the refusal of this defendant to pay the plaintiffs any charges of the plaintiffs lawfully due in respect of this defendant's rice the plaintiffs were unable to pay their employees in charge of the lighters and this resulted without any consent on the part of the plaintiffs in a boycott of the said rice by the plaintiffs' employees and by other lighter-owners. I find that in fact once the deposit had been made in court the plaintiffs were at all times desirous of getting the rice out of their lighters as quickly as possible.

The deterioration in this defendant's rice was caused solely by this defendant failing to act in reasonable time to take delivery of any rice of his. This defendant had at no time requested the plaintiffs to discharge any rice of his onto a godown of the Port of Singapore Authority. In any case the rice of this defendant could not have been landed so as to be stored in the godown of the Port of Singapore Authority as the plaintiffs were not in the position to comply with the requirements of the Port of Singapore Authority as they did not have the necessary documentation or money.

There is no merit in Sharbatly's counterclaim.

In the result there will be judgment for the plaintiffs against each of the defendants, except the owners of textiles under Bills of Lading Nos. H3 to H6 as the parties have settled, in the sums set out in paragraph 14 of the further amended statement of claim and costs. The counterclaim of Sharbatly is dismissed with costs.

Claim allowed; counterclaim dismissed.

Solicitors: *Murphy & Dunbar; Laycock & Ong; Allen & Gledhill; Donaldson & Burkinshaw; Lee Kim Siang & Co.*